IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8516 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR MUNICIPAL CORPORATION
Versus
SADABHAI BHIMABHAI

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Appearance :
MR HS MUNSHAW for Petitioner.
MR YV SHAH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/06/2007

ORAL JUDGMENT

The petitioner, Bhavnagar Municipal Corporation, being aggrieved by the award dated 28.04.99 passed by Industrial Tribunal, Bhavnagar in Reference [IT] No. 23 of 1991 is before this Court with a submission that the learned Tribunal could not issue order of promotion in favour of the respondent with retrospective effect.

Short facts necessary for disposal of the present writ application are that the respondent, Sadabhai Bhimabhai, was working with the petitioner Corporation in the cadre of Cleaner in the grade of Rs.210/-. The respondent thereafter passed the examination of Wireman, and the Corporation took work for a period of two months from the present respondent. Being aggrieved by non-promotion, the respondent approached the Industrial Tribunal and the Industrial Tribunal, after considering the entire material and also after taking into consideration that certain juniors to the petitioner who were also in the cadre of Cleaner have been promoted to the post of Mechanics, allowed the respondent's Reference with a direction to the petitioner employer to promote the present respondent as Wireman with effect from 27.03.84 – the date on which juniors to the petitioner were promoted.

Shri Munshaw, learned counsel for the petitioner Corporation submits that promotion of the juniors would not give cause of action in favour of the present respondent workman to make a Reference, and it would always be for an employer to promote or not a particular employee after considering his merits and demerits.

Shri Y.V. Shah, learned counsel for the respondent

workman submits that in the present case, no allegations against the merits of the present petitioner has been made; undisputedly, the petitioner has passed wireman examination and juniors to the respondent have already been promoted with effect from 27.03.84. He also submits that the present is a case of pick and choose and pick and kick. He also submits that there is no reason in favour of the present petitioner to challenge the just award made by the Industrial Tribunal.

After hearing the parties, I must record that the undisputed facts are that the respondent had passed wireman examination; juniors to the respondent have already been promoted with effect from 27.03.84; for the reasons best known to the petitioner, order or promotion was not issued in favour of the present respondent.

It is not the case of the petitioner-employer that the respondent-workman's merits do not permit or entitle him to an order of promotion. Even during the course of arguments, learned counsel for the petitioner could not distinguish the case of the respondent from the case of the juniors who had already been promoted. If everything is equal, then equals are to be treated equally. On passing the wireman examination, the respondent would be entitled to promotion and if juniors to him, after acquiring certain qualifications have already been promoted, then the petitioner cannot be extended a step-motherly treatment.

After hearing the parties and going through the record, I am unable to hold that the learned Tribunal was unjustified in granting the claim made by the respondent.

The petition deserves to be, and in accordingly, dismissed. Interim Relief is vacated. Rule is discharged. No order as to costs.

[R.S.GARG, J.]

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